

Honorable Franklin D. Burgess

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BECKSON MARINE, INC., a Connecticut
corporation; CAROLE A. BECKERER,
ELOISE BRADY and JOAN A. JONES,
Custodians,

Plaintiffs,

v.

NFM, INC., a Washington corporation,

Defendant.

Cause No. 3:98-cv-05531 FDB

**STIPULATED PROTECTIVE ORDER
GOVERNING CONFIDENTIALITY**

STIPULATION GOVERNING CONFIDENTIALITY

The parties hereto, through their undersigned counsel of record, hereby stipulate and agree that this case concerns intellectual property, and discovery will involve disclosure of proprietary and trade secret information, and the subjoined Order Governing Confidentiality may be entered by the Court.

1 Dated: December 21, 2005

2 Patrick M. Dwyer P.C.

STRATTON BALLEW PLLC

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4 By: s/Patrick Michael Dwyer
Patrick Michael Dwyer, WSBA No. 17497
5 Attorney for Defendant

By: s/Rex Stratton
Rex B. Stratton, WSBA No. 1913
6 Attorneys for Plaintiffs

7 Allen D. Brufsky, Esq.
CHRISTOPHER & WEISBERG, P.A.
200 E. Las Olas Blvd. Suite 2040
8 Ft. Lauderdale, FL 33301
Tel: 954-828-1488
9 Fax: 954-828-9122
E-mail abrufs@aol.com or abrufsky@cwciip.com

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11 **ORDER GOVERNING CONFIDENTIALITY**

12 This case having been designated by one or more of the parties as a matter involving
13 intellectual property and will require, during discovery the disclosure of proprietary or trade
14 secret information, and it appearing to the Court that such designation should be approved, it is
15 accordingly ORDERED:

16 1. **Confidential Information.** Any document produced by any party herein to any
17 other party herein may be designated as confidential within the meaning of this order by
18 stamping the word "CONFIDENTIAL" upon the face of such documents. Other information
19 provided through discovery may be similarly designated as "CONFIDENTIAL". Any document
20 designated "CONFIDENTIAL", and all information contained in the document (collectively
21 ***Confidential Information***), shall not be utilized by any opposing party, or the party's agents or
22 employees, except as permitted by the terms of this Order.

1 2. **Deposition and Other Testimony.** Deposition and other testimony may be
2 designated “CONFIDENTIAL” at the time the testimony is taken. Within thirty (30) days of
3 receipt of the transcript, by a written notice to all other parties, the party must identify the
4 specific pages of the transcript it chooses to be designated “CONFIDENTIAL”. From the time
5 of the deposition until thirty (30) days after receipt of the transcript, the entire deposition will be
6 treated as Confidential Information. Thereafter, only the designated pages will continue to be
7 confidential.

8 3. **Identification of Persons.** Confidential Information shall not be disclosed to any
9 person other than: (1) inside and outside counsel for any party to this proceeding, including
10 necessary paralegal, secretarial and clerical personnel assisting counsel; (2) the principal parties;
11 (3) qualified persons taking testimony involving such documents or information and necessary
12 stenographic and clerical personnel (e.g., court reporters); (4) trial or deposition witnesses
13 employed or retained by any party producing the Confidential Information; (5) *bona fide* experts
14 (and their employees) employed or retained with respect to this action by any party or their
15 counsel; and (6) this Court. Confidential Information received by any person in the above-
16 numbered categories shall be used only for purposes of this litigation and for no other purpose.

17 4. **Confidential Information Counsel Only.** To protect against the unnecessary
18 disclosure of particularly sensitive information, any party may also designate in writing portions
19 of Confidential Information as Confidential Information Counsel Only (*Confidential*
20 *Information Counsel Only*). Confidential Information Counsel Only material may not be
21 disclosed to any person other than counsel without either obtaining the consent of the party
22 which produced such material, or after compliance with the procedures set forth in Paragraph 5,
23 *Decertification*, regarding objections to confidentiality designations.

1 **5. Decertification.** Nothing in this Protective Order shall prevent a receiving party
 2 from contending that any or all Confidential Information is not confidential. Any receiving party
 3 may, at any time, request the producing party to cancel the Confidential Information designation
 4 with respect to any document, object and/or information, and to agree that thereafter such
 5 document, object and/or information is to be no longer subject to the provisions of this Order.
 6 Such requests shall be written, shall be served on counsel for the producing party and shall
 7 particularly identify the Confidential Information which the receiving party contends is not
 8 confidential and the reasons supporting its contentions. The request to cancel the Confidential
 9 Information designation will not become effective until thirty (30) days after the request is
 10 served on the producing party unless the producing party moves for a further Protective Order.
 11 If a motion for a further Protective Order is served within the thirty (30)-day period, the
 12 document or information which confidentiality is in dispute shall remain subject to this
 13 Protective Order until the motion is considered by the Court.

14 **6. Nonacquiescence.** A failure of a receiving party to challenge a claim of
 15 confidentiality shall not constitute acquiescence to such claim if a question of compliance with
 16 this Order is subsequently raised.

17 **7. Confidentiality Agreement.** All employees, consultants, witnesses, or their
 18 employees who, in the course of this case, see or hear of any documents produced in the
 19 litigation, or any other matters containing Confidential Information or who have access to any
 20 such documents or matters, shall be required to sign a confidential agreement in the following
 21 form:

22
 23 I, _____, have read a copy of
 24 the Protective Order Governing Confidentiality entered in this
 case. I recognize that during my participation in the handling and

development of this case I may have occasion to read or hear of documents produced in this litigation, or matters which are designated "CONFIDENTIAL". I agree to use any such documents and matters solely in connection with my participation in this case and for no other purpose. I agree to abide by said Protective Order Governing Confidentiality in every respect.

Signature

Date

Counsel for each party shall collect the signed confidentiality agreements and retain them until the conclusion of the case, at which time copies shall be sent to all parties.

8. **Other Persons.** If this Court, for any reason, orders that Confidential Information shall be made available to persons not described in Paragraph 3 above, the Confidential Information shall be accessible or disseminated to those persons subject to this Protective Order, and they shall be considered subject to it.

9. **Unauthorized Disclosure.** If Confidential Information is disclosed to any person other than in a manner authorized by this Protective Order, the person responsible for the disclosure shall immediately bring all pertinent facts relating to the unauthorized disclosure to the attention of counsel for each party and the Court, and without prejudice to other rights and remedies of any party may have under this Protective Order or generally, the person responsible for the unauthorized disclosure shall make every effort to prevent any further disclosure of the Confidential Information by the person who was the recipient of such information.

10. **Sealed Documents.** If any document containing Confidential Information produced in this litigation is introduced as an exhibit in this case prior to trial, or otherwise placed among the court papers in this case where it may become of public record, the document

1 shall be filed in a sealed envelope or container, marked with the caption of this case, and a notice
2 substantially as follows:

3 CONFIDENTIAL

4 This envelope or container holds Confidential Information as is
5 filed under seal pursuant to the Protective Order and is not to be
6 opened except by direction of the Court or by written consent of
[name of party designating the information as Confidential].

7 At trial, exhibits containing Confidential Information, at the request of the producing party and
8 with the permission of the Court, shall be filed under seal.

9 11. **Derivative Papers.** This Protective Order shall apply to all pleadings, discovery
10 papers, briefs, summaries, notes, abstracts, or other documents, including memoranda or work
11 product prepared by counsel, their staff, or authorized outside consultants or experts which
12 comprise, embody, summarize, discuss, or quote from any documents produced in the litigation,
13 or deposition testimony transcripts or any other material which is designated
14 "CONFIDENTIAL".

15 12. **Reproduction and Copying.** Confidential Information shall not be copied or
16 reproduced except to the extent that copying or reproduction is reasonably necessary for the
17 conduct of this lawsuit, and all such copies or reproductions shall be marked as
18 "CONFIDENTIAL" and subject to the terms of this Protective Order.

19 13. **Admissibility.** Nothing in this Protective Order shall affect the admissibility into
20 evidence of Confidential Information, or abridge the rights of any person to seek judicial review
21 or to pursue other appropriate judicial action with respect to any ruling made by the Court
22 concerning the issues of the status of "CONFIDENTIAL" documents.

23 Entry of this Protective Order is without prejudice to any party seeking an Order from
24 this Court imposing further restrictions on the dissemination of highly confidential documents, or

1 seeking to rescind, modify, alter or amend this Protective Order with respect to specific
2 documents.

3 14. **Disposition Upon Completion.** After this case is finally completed, including
4 the exhaustion of all appeals, documents designated "CONFIDENTIAL", and all other matters
5 so designated, shall either: (a) be returned to the producing party; or, (b) at the written direction
6 of the producing party, be destroyed, and the party authorized to destroy the documents shall
7 provide a certificate to the producing party attesting to the destruction of the documents.

8 15. **Public Knowledge.** Notwithstanding the designation "CONFIDENTIAL", any
9 documents or testimony, shall not be confidential if:

10 (i) the information at the time of disclosure is in the public domain by
11 publication or otherwise;

12 (ii) the information, at any time, through no act or failure to act on the
13 part of the recipient party, becomes part of the public domain by
14 publication or otherwise;

15 (iii) the information is already in the possession of any other party at
16 the time of disclosure by the producing party and was not acquired
17 directly or indirectly from the disclosing party; or

18 (iv) the information is made available to any party by a third party who
19 obtained the information by legal means and without any
20 obligation of confidence to the party claiming its confidential
21 nature.

22 16. **Notice to Others.** The Clerk is ordered to show a copy of this Protective Order to
23 anyone desiring access to any of the court papers of this action. The parties and their attorneys
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1 shall inform all witnesses, consultants, employees, agents, court reporters, or anyone else who
2 may from time to time have access to any Confidential Information of the substance of this
3 Protective Order.

4 17. **Nonparty Request.** In the event that any person who is in receipt of another
5 party's Confidential Information receives a written request, subpoena, or court order seeking
6 disclosure of the other party's Confidential Information, such person shall immediately notify
7 counsel for the party whose Confidential Information is sought of the request, subpoena, or court
8 order and provide counsel with a copy of the same.

9 18. **Survival.** The obligations and duties arising under this Protective Order shall
10 survive the termination of this action. This Court shall retain jurisdiction over the parties to
11 resolve any dispute respecting the improper use of Confidential Information disclosed under
12 terms of this Protective Order.

13 19. **Nonparty Production.** If any document, information and/or deposition
14 testimony is obtained from a person or entity not a party to this litigation, such person or entity
15 shall have the same right to designate any document or deposition testimony as
16 "CONFIDENTIAL" as a party would have, and any document or deposition testimony so
17 designated shall be governed in all respects by this Protective Order, PROVIDED that the
18 nonparty likewise agrees to be bound by the terms of this Protective Order. The terms "party"
19 and "parties" shall be deemed to include nonparties to the extent necessary or appropriate to
20 implement the terms of this paragraph.

21 20. **Party's Own Use.** Nothing in this Protective Order shall prevent a party from
22 using or disclosing its own documents or information in any manner, and entry of this Protective
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1 Order shall not preclude the parties from mutually agreeing to the use or disclosure of
2 Confidential Information other than as permitted by this Order.

3 21. **Right to Question.** The parties shall use reasonable care to avoid designating any
4 document or information as “CONFIDENTIAL” which has been published or can otherwise be
5 shown to be in the public domain. This Protective Order is entered without prejudice to the right
6 of any party to bring before the Court by motion the question of whether any particular
7 information is or is not confidential. The person or party asserting confidentiality shall have the
8 burden of establishing the same and the degree of protection required.

9 Dated this 21st day of December 2005.

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12 FRANKLIN D. BURGESS
13 UNITED STATES DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2005 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Patrick Michael Dwyer and Ryan E. Dodge, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: None.

s/Rex B. Stratton

Rex B. Stratton, WSBA No. 1913

STRATTON BALLEW PLLC

18850-103rd Avenue S.W. Suite 102

Seattle, WA 98070

Phone: 206-682-1496

Facsimile 206-260-3816

stratton@strattonballew.com